

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

COMMERCIAL ARBITRATION APPLICATION NO. 217 OF 2024

Aegis Vopak Terminal Limited

}Applicant

Versus

Divinity Impex

}Respondent

WITH
COMMERCIAL ARBITRATION APPLICATION NO. 186 OF 2024
WITH
COMMERCIAL ARBITRATION APPLICATION NO. 218 OF 2024

Ms. Aushi Doshi, a/w Diksha Tripathi, i/b Indialaw LLP, for the Applicant.

Ms. Asmita Kuvalekar, i/b Ramachandran Mattiyil, for Respondent in CARAP/217/24.

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : AUGUST 1, 2025

ORDER :

Commercial Arbitration Application No.217 of 2024:-

1. This Application has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (“***the Act***”) seeking appointment of an arbitrator in connection with disputes and differences that are said to have arisen between the parties under an agreement dated April 23, 2018 (“***Agreement***”). The arbitration agreement is contained in Clause 3

(found at Page 34 of the Application). In the interest of brevity, the arbitration agreement is not being extracted here. Suffice it to say that this matter falls within the jurisdiction of this Court.

2. Learned Counsel for the Respondent has no quarrel with proceeding to arbitration forthwith. Consequently, Learned Counsel for the parties jointly submit that they would be agreeable to have all the disputes and differences between them, in connection with the aforesaid agreement, referred to resolution by an arbitral tribunal, leaving it open to the parties to seek such interlocutory relief as they may desire from the arbitral tribunal.

3. In these circumstances, the Learned Arbitral Tribunal is constituted in the following terms:-

A) Ms. Smita Thakur, an advocate of this Court, is hereby appointed as the Sole Arbitrator to adjudicate upon the disputes and differences between the parties arising out of and in connection with the Agreement referred to above;

Office Address:- Office No 35, 2nd Floor,
Maharashtra Bhavan,
Near Bora Masjid,

Besides Old Handloom House,
Fort, Mumbai – 400 001.

Email ID: smitathakur2510@gmail.com

- B) A copy of this Order will be communicated to the Learned Sole Arbitrator by the Advocates for the Applicant within a period of one week from the date of upload of this order. The Applicant shall provide the contact and communication particulars of the parties to the Arbitral Tribunal along with a copy of this Order;
- C) The Learned Sole Arbitrator is requested to forward the statutory Statement of Disclosure under Section 11(8) read with Section 12(1) of the Act to the parties within a period of two weeks from receipt of a copy of this Order;
- D) The parties shall appear before the Learned Sole Arbitrator on such date and at such place as indicated, to obtain appropriate directions with regard to conduct of the arbitration including fixing a schedule

for pleadings, examination of witnesses, if any, schedule of hearings etc. At such meeting, the parties shall provide a valid and functional email address along with mobile and landline numbers of the respective Advocates of the parties to the Arbitral Tribunal. Communications to such email addresses shall constitute valid service of correspondence in connection with the arbitration;

E) All arbitral costs and fees of the Arbitral Tribunal shall be borne by the parties equally in the first instance, and shall be subject to any final Award that may be passed by the Tribunal in relation to costs.

4. Commercial Arbitration Application No.217 of 2024 is *finally disposed of* in the aforesaid terms.

Commercial Arbitration Application No.186 of 2024 and 218 of 2024:

5. Advocates on record for the Respondent submit that they have no instructions to appear in these matters any more. Be that as it may, with the assistance of the Advocate for the Applicant, the record has been examined. It is seen that a reply affidavit has been filed in each of the

captioned proceedings. The only element in the affidavit in reply that would touch upon the existence of the arbitration agreement is the contention that, upon the goods being seized by the Directorate of Revenue Intelligence, the agreement has come to an end and has been rendered null and void.

6. The Section 11 Court cannot examine existential questions of substantive nature but must restrict itself to examining the existence of a formally executed arbitration agreement.

7. In these circumstances, no useful purpose would be served by keeping these Applications pending any further.

8. These two Applications evidently contain some linkage to the Application in Commercial Arbitration Application No.217 of 2024. Therefore, to achieve economies of scale for the parties and to make the arbitration less expensive, it would be appropriate to refer these disputes also to the very same arbitral tribunal as appointed in disposal of Commercial Arbitration Application No.217 of 2024.

9. In these circumstances, Commercial Arbitration Application No.186 of 2024 and Commercial Arbitration Application No.218 of 2024 are hereby *finally disposed of*.

10. Needless to say, nothing contained in this order is an expression of an opinion on merits of the matter or the relative strength of the parties. All issues on merits are expressly kept open to be agitated before the arbitral tribunal appointed hereby.

11. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]